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Before the
Federal Communications Commission
Washington, D.C. 20554

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JAN 25 2010

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In the Matter of)

Elimination of Part 23
of the Commission's Rules)

IB Docket No. 05-216

REPORT AND ORDER**Adopted: January 6, 2010****Released: January 14, 2010**

By the Commission:

I. INTRODUCTION

1. In this Order, we eliminate Part 23 of the Commission's Rules, governing International Fixed Public Radiocommunication Services (IFPRS).¹ We also eliminate the frequency allocations for IFPRS in the Table of Frequency Allocations.² These revisions will eliminate a co-primary spectrum allocation for an outmoded service, and will facilitate operations by other services allocated to use those bands on a primary basis, such as by other Fixed Service (FS) operations and the Fixed Satellite Service (FSS), which provide, among other things, disaster recovery communications services.

II. BACKGROUND

2. The Commission's rules define IFPRS as a publicly available fixed service between the United States and foreign points.³ Part 23 was created in the 1930s. IFPRS more recently was made up of point-to-point microwave services. For many years, these facilities provided an important form of international communications.⁴ More recently, however, IFPRS has been limited to point-to-point microwave services provided between islands in the Caribbean Sea.⁵

3. In the Notice of Proposed Rulemaking in this Proceeding, the Commission invited comment on eliminating Part 23, and regulating IFPRS operators under the rules for domestic Fixed Wireless operators in Part 101.⁶ The Commission invited comment on a transition mechanism from the Part 23

¹ 47 C.F.R. Part 23.

² IFPRS is allocated to the 3700-4200 MHz and 5925-6425 MHz bands in the U.S. Table of Frequency Allocations. See 47 C.F.R. § 2.106. For purposes of this Order, we refer to these frequency bands as the conventional C-band.

³ 47 C.F.R. § 23.1.

⁴ Federal Communications Commission Biennial Regulatory Review 2000, *Staff Report*, CC Docket No. 00-175, 15 FCC Rcd 21084 (2000) (2000 Biennial Review Staff Report).

⁵ See Amendment of Parts 2, 25, and 87 of the Commission's Rules to Implement Decisions from World Radiocommunication Conferences Concerning Frequency Bands Between 28 MHz and 36 GHz and to Otherwise Update the Rules in this Frequency Range, *Report and Order*, ET Docket No. 02-305, 18 FCC Rcd 23426, 23452 (para. 68) (2003) (WRC Implementation Order).

⁶ Elimination of Part 23 of the Commission's Rules, *Notice of Proposed Rulemaking*, IB Docket No. 05-216, IB Docket No. 00-248, 20 FCC Rcd 11416, 11419 (paras. 5-7) (2005) (Part 23 Notice).

rules to the Part 101 rules.⁷ The Commission also invited comment on revising the frequency allocation for IFPRS.

"4. There were three IFPRS licensees in the year 2000.⁹ In the *Part 23 Notice*, the Commission observed that one of those IFPRS licensees had ceased its operations.¹⁰ Since the *Part 23 Notice* was issued in 2005, the remaining two licensees have ceased their IFPRS operations.¹¹ No other parties have applied for an IFPRS license since 2000. Moreover, the application filed in 2000 was the first one in "several years."¹²

5. One party, PanAmSat Corporation (PanAmSat), filed comments, proposing primarily to eliminate the current allocation for IFPRS in the C-band. No replies were filed. For the reasons discussed below, we eliminate Part 23 as proposed in the *Part 23 Notice*, together with the frequency allocation for IFPRS. We also conclude that the other issues raised in the *Part 23 Notice* are moot.

III. DISCUSSION

6. No one currently offers IFPRS, and there is no basis in the record for assuming that anyone will apply for a license to operate facilities to provide this service in the future. Accordingly, there is no need for Part 23, and we remove it from the Commission's rules. In addition, we find that issues related to the regulation of IFPRS and the transition from Part 23 to Part 101 are moot.

7. Removing Part 23 from the Commission's rules also eliminates the need to retain a frequency allocation for IFPRS. We agree with PanAmSat's contention that retaining an allocation for IFPRS in the C-band can complicate the planning and coordination of facilities in services that have a co-primary allocation in that band.¹³ We therefore eliminate the allocations for IFPRS in the Table of Frequency Allocations.

⁷ *Part 23 Notice*, 20 FCC Rcd at 11420 (paras. 8-9).

⁸ *Part 23 Notice*, 20 FCC Rcd at 11419 (para. 6).

⁹ The three IFPRS providers in operation in 2000 were AT&T of the Virgin Islands, Inc., Broadcast Media Satellite, Inc. (BMS), and Interisland Telephone Corporation. See 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Notice of Proposed Rulemaking*, IB Docket No. 00-248, 15 FCC Rcd 25128, 25145 (para. 48) (2000) (*Part 25 Streamlining Notice*).

¹⁰ Interisland Telephone Corporation allowed its license to expire. See *Part 23 Notice*, 20 FCC Rcd at 11420 (para. 8).

¹¹ AT&T surrendered its license. See Letter from Martha Lewis Marcus, Senior Attorney, AT&T Corp., to Secretary, FCC (dated Aug. 31, 2005) (*AT&T Letter*). On December 27, 2007, the Satellite Division of the International Bureau cancelled BMS's license on the basis that it had failed to pay its regulatory fees. Letter from Robert G. Nelson, Chief, Satellite Division, International Bureau, Federal Communications Commission, to Broadcast Media Satellite, Inc., 22 FCC Rcd 21900 (Int'l Bur., Sat. Div., 2007).

¹² 2000 Biennial Review Staff Report, 15 FCC Rcd at 21233.

¹³ PanAmSat Comments at 2.

IV. PROCEDURAL MATTERS

8. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA)¹⁴ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."¹⁵ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁷ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁸

9. In this *Report and Order*, the Commission decides to eliminate the Part 23 rules applicable to International Fixed Public Radio Service (IFPRS) licensees, because there are no IFPRS licensees in operation. Therefore, we certify that the actions in this *Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Report and Order*, including a copy of this certification, in a report to Congress pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A). In addition, the *Report and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. See 5 U.S.C. § 605(b).

10. *Paperwork Reduction Act.* This *Report and Order* does not adopt new or modified information collection requirements.

V. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that this *Report and Order* in IB Docket No. 05-216 is hereby ADOPTED.

12. IT IS FURTHER ORDERED that Parts 0, 2, and 23 of the Commission's rules ARE AMENDED as set forth in the Appendix to this Order. An announcement of the effective date of these rule revisions will be published in the Federal Register.

¹⁴ The RFA, see 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

¹⁵ 5 U.S.C. § 605(b).

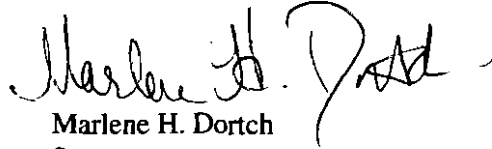
¹⁶ 5 U.S.C. § 601(6).

¹⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632).

¹⁸ Small Business Act, 15 U.S.C. § 632.

13. IT IS FURTHER ORDERED that the Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Marlene H. Dortch", is written over the printed name and title.

Marlene H. Dortch
Secretary

APPENDIX**Amendments to the Code of Federal Regulations****PART 0 – COMMISSION ORGANIZATION**

1. The authority citation continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. In § 0.261, revise paragraph (a)(3) to read as follows:

§ 0.261 Authority delegated.

(a) * * *

(3) To act upon applications for international telecommunications and services pursuant to relevant portions of part 63 of this chapter, and coordinate with the Wireline Competition Bureau as appropriate;

* * * * *

**PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS;
GENERAL RULES AND REGULATIONS**

3. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

- a. Pages 38 and 41 are revised.

- b. In the list of Non-Federal Government (NG) Footnotes, footnote NG41 is removed.

§ 2.106 Table of Frequency Allocations.

The revisions read as follows:

3300-3400 RADIOLOCATION	3300-3400 RADIOLOCATION Amateur Fixed Mobile	3300-3400 RADIOLOCATION Amateur	3300-3500 RADIOLOCATION US108 G2	3300-3500 Amateur Radiolocation US108	Private Land Mobile (90) Amateur (97)
5.149 5.429 5.430	5.149 5.430	5.149 5.429			
3400-3600 FIXED FIXED-SATELLITE (space-to-Earth) Mobile Radiolocation	3400-3500 FIXED FIXED-SATELLITE (space-to-Earth) Amateur Mobile Radiolocation 5.433 5.282 5.432		US342	5.282 US342	
5.431	3500-3700 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile Radiolocation 5.433		3500-3650 RADIOLOCATION G59 AERONAUTICAL RADIONAVIGATION (ground-based) G110 US245	3500-3600 Radiolocation 3600-3650 FIXED-SATELLITE (space-to-Earth) US245 Radiolocation	Private Land Mobile (90)
3600-4200 FIXED FIXED-SATELLITE (space-to-Earth) Mobile	5.435		3650-3700	3650-3700 FIXED FIXED-SATELLITE (space-to-Earth) NG169 NG185 MOBILE except aeronautical mobile US348 US349	Satellite Communications (25) Private Land Mobile (90)
	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile		US348 US349 3700-4200	3700-4200 FIXED FIXED-SATELLITE (space-to-Earth) NG180	Satellite Communications (25) Fixed Microwave (101)
4200-4400 AERONAUTICAL RADIONAVIGATION 5.438			4200-4400 AERONAUTICAL RADIONAVIGATION 5.440 US261		Aviation (87)
5.439 5.440			4400-4500 FIXED MOBILE	4400-4500	
4400-4500 FIXED MOBILE			4500-4800 FIXED MOBILE US245	4500-4800 FIXED-SATELLITE (space-to-Earth) 5.441 US245	
4500-4800 FIXED FIXED-SATELLITE (space-to-Earth) 5.441 MOBILE			4800-4940 FIXED MOBILE US203 US342	4800-4940 US203 US342	
4800-4990 FIXED MOBILE 5.442 Radio astronomy			4940-4990	4940-4990 FIXED MOBILE except aeronautical mobile	Private Land Mobile (90)
5.149 5.339 5.443			5.339 US311 US342 G122	5.339 US311 US342	

International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE			5925-6425	5925-6425 FIXED FIXED-SATELLITE (Earth-to-space) NG181	Satellite Communications (25) Fixed Microwave (101)
			6425-6525	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE	TV Broadcast Auxiliary (74F) Cable TV Relay (78) Fixed Microwave (101)
			5.440 5.458	5.440 5.458	
			6525-6700	6525-6700 FIXED FIXED-SATELLITE (Earth-to-space)	Fixed Microwave (101)
5.149 5.440 5.458			5.458 US342	5.458 US342	
6700-7075 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE			6700-7125	6700-6875 FIXED FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 5.458 5.458A 5.458B	Satellite Communications (25) Fixed Microwave (101)
				6875-7025 FIXED NG118 FIXED-SATELLITE (Earth-to-space) (space-to-Earth) 5.441 MOBILE NG171 5.458 5.458A 5.458B	Satellite Communications (25) TV Broadcast Auxiliary (74F) Cable TV Relay (78)
5.458 5.458A 5.458B 5.458C				7025-7075 FIXED NG118 FIXED-SATELLITE (Earth-to-space) NG172 MOBILE NG171 5.458 5.458A 5.458B	TV Broadcast Auxiliary (74F) Cable TV Relay (78)
7075-7145 FIXED MOBILE				7075-7125 FIXED NG118 MOBILE NG171	
			5.458	5.458	
			7125-7145 FIXED	7125-7190	
5.458 5.459			5.458 G116		
7145-7235 FIXED MOBILE SPACE RESEARCH (Earth-to-space) 5.460			7145-7190 FIXED SPACE RESEARCH (deep space) (Earth-to-space) US262 5.458 G116	5.458 US262	
			7190-7235 FIXED SPACE RESEARCH (Earth-to-space) G133	7190-7235	
5.458 5.459			5.458	5.458	

PART 23 – INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

5. The authority citation continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303. Interpret or apply sec. 301, 48 Stat. 1081; 47 U.S.C. 301.

6. In Title 47, remove part 23.